No. 80-1757

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In the Supreme Court of the United States

OCTOBER TERM, 1980

W. JASON MITAN,

Petitioner,

vs.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION [OF ILLINOIS], et al.,

Respondents.

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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APPENDIX 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Thomas R. McMillen

Cause No. 79 C 5282 Date APR. 18, 1980

Title of Cause MITAN et al v. ILL. ATTORNEY REGISTRATION & DISCIPLINARY COMMISSION et al

Motion of defendants to dismiss the complaint as amended is granted & judgment is entered in favor of the defendants with costs. A Rule 58 judgment will be entered. (Decision attached)

/s/ Thomas R. McMillen
Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

W. JASON MITAN, et al.,

Plaintiffs,

v.

ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, et al.,

Defendants.

NO. 79 C 5282

DECISION

Plaintiff seeks to set aside his disbarment from practicing law on the grounds that he was deprived of various constitutional rights in violation of 42 U.S.C. § 1983. We denied his motion for a temporary restraining order on January 7, 1980, and the Illinois Supreme Court issued its mandate for disbarment on January 16, 1980. Defendants have filed a motion to dismiss the complaint as amended. We find and conclude that his amended complaint should be dismissed.

Plaintiff bases his first constitutional argument on the fact that the original charge against him was dismissed by the Illinois Attorney Registration and Disciplinary Commission for failure to comply with one of its procedural rules. This dismissal was without prejudice and the complaint was refiled but not voted on by the Inquiry Board pursuant to Supreme Court Rule 753(a). He alleges in paragraph 33 of his complaint that these matters and others were asserted before the Illinois Supreme Court,

and its decision specifically passes upon the propriety of the procedure followed in the administrative process. 75 Ill. 2d 118, 123-26 (Jan. 12, 1979). Plaintiff refrained from participating in the proceedings of the Hearing Panel or the Review Board on the refiled charges but was represented there by counsel.

In substance, our decision is governed by *Grossgold* v. *Supreme Court of Illinois,* 557 F.2d 122 (7th Cir. 1977) which held that a decision on federal constitutional issues by the Illinois Supreme Court is *res judicata* on any issues which were decided or could have been decided on the pleadings before it. By adopting the recommendation of a Hearing Panel and the Inquiry Review Board, the Illinois Supreme Court effectively decided the issue of due process, and plaintiff alleges no facts to the contrary in his complaint. As the Seventh Circuit said in *Grossgold,* 557 F.2d at 124-25 (1977):

> The flaw in plaintiff's contentions is that it overlooks the judicial review already accorded him. The Illinois Supreme Court, which is fully competent to pass on federal constitutional questions, has passed upon this constitutional question, and its decision became final when the Supreme Court of the United States denied certiorari. Since the Illinois Supreme Court was bound to pass on the constitutional question posed by the pardon, the court's denial of Grossgold's petition for reconsideration necessarily implied that the constitutional question was being decided against the plaintiff. Consequently, there was no arguable constitutional "deprivation" upon which Section 1343 could operate to provide subject matter jurisdiction. The doctrine of *res judicata* bars any further litigation of this question.

Other constitutional arguments are raised in paragraph 34 of the complaint which were not explicitly ruled on by the Illinois Supreme Court, perhaps because they came as

an afterthought to the plaintiff or his attorney. He alleges that he was deprived of the freedom of expression and association contrary to the First Amendment and the right to be free from cruel and unusual punishment contrary to the Eighth Amendment. This is tantamount to contending that the plaintiff cannot be deprived of his right to practice law or to earn a livelihood by his profession, since he is *ipso facto* being deprived of these constitutional rights by disbarment.

So long as the Illinois Supreme Court and its subordinate administrative bodies accord plaintiff procedural due process, we know of no court decision or legal theory which would deprive that court from deciding who should and should not be allowed to practice law in this State. The allegations of his complaint and the arguments in his memoranda prove too much, and if adopted would prevent the Illinois Supreme Court from disciplining attorneys in almost every instance.

Counts II through IV of the complaint are filed by clients of the plaintiff Mitan, alleging that his disbarment deprives them of the right to counsel. Only Matthews, who is the plaintiff in Count IV, alleges that he seeks to employ Mitan for the defense of a criminal charge. Although the Sixth Amendment to the United States Constitution accords a defendant the right to counsel in a criminal case, this right cannot be exercised in such a way as to prevent discipline of an attorney; the courts have frequently held that the Sixth Amendment does not allow a criminal defendant the unqualified right to any attorney or lay person of his choice. Once Mitan has been disbarred, neither he nor his clients can circumvent that result by resorting to the Sixth Amendment. See *Kissell* v. *Breskow,* 579 F.2d 425, 430 n.7 (7th Cir. 1978).

Count V was added by an amendment filed December 26, 1979 and alleges that two of the individual defendants singled out Mitan for disbarment in furtherance of their conspiracy. To invoke the provisions of 42 U.S.C. § 1985 upon which this count is based, plaintiff must at least allege an invidious deprivation of a constitutional right caused by some type of class-based discrimination. *Lesser* v. *Braniff Airways, Inc.*, 518 F.2d 538 (7th Cir. 1975). Furthermore, in the absence of a specification of the nature of the conspiracy allegedly engaged in by the two individual defendants, the conclusory allegations of a conspiracy cannot stand. *Dieu* v. *Norton*, 411 F.2d 761 (7th Cir. 1969).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the motion of the defendants to dismiss the complaint as amended is granted, and judgment is entered in favor of the defendants with costs. A Rule 58 judgment will be entered.

ENTER:

/s/ *Thomas R. McMillen*
Judge, U. S. District Court

DATED: Apr. 18, 1980

APPENDIX 2

UNITED STATES DISTRICT COURT
For The
NORTHERN DISTRICT OF ILLINOIS — EASTERN DIVISION

W. JASON MITAN, et al

Plaintiffs

vs.

ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, et al

Defendants

Civil Action File No. 79 C 5282

JUDGMENT

This action came on for (hearing) before the Court, Honorable Thomas R. McMillen, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been rendered,

It is Ordered and Adjudged motion of defendants to dismiss the complaint as amended is granted and judgment is entered in favor of the defendants with costs.

Dated at Chicago, Illinois, this 18th day of April, 1980.

H. Stuart Cunningham
Clerk of Court

By: *Kathleen Branch*
Deputy Clerk

APPENDIX 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Thomas B. McMillen

Cause No. 79 C 5282 Date JUNE 25, 1980

Title of Cause MITAN et al v. ILL. ATTORNEY REGISTRATION & DISCIPLINARY COMMISSION et al

The Decision entered April 18, 1980 is amended & judgment is entered in favor of defendant Clell L. Woods & against the plaintiff W. Jason Mitan for $1,050.00. (Decision attached)

/s/ *Thomas R. McMillen*
Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

W. JASON MITAN, et al.,

Plaintiffs,

v.

ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, et al.,

Defendants.

NO. 79 C 5282

DECISION

Following our dismissal of plaintiffs' amended complaint on April 18, 1980, the defendant Clell L. Woods, Clerk of the Illinois Supreme Court, filed a motion for attorney's fees pursuant to 42 U.S.C. § 1988. The motion was supported by citation of authorities, constituting a memorandum under Local Rule 13, but plaintiff has not filed any opposition.*

Defendant's motion is supported by an affidavit showing time expended by an Assistant Attorney General of Illinois since January 3, 1980. This date was selected presumably because that attorney first began working on the case in connection with plaintiff's motion for a Temporary Restraining Order. That motion was denied on January 7, 1980.

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* Although plaintiff Mitan's clients are also named as plaintiffs, they are not involved in this motion.

Ultimately we dismissed the complaint for failure to state a claim, relying primarily upon the first point decided in *Grossgold* v. *Supreme Court of Illinois,* 557 F.2d 122 (7th Cir. 1977). Plaintiff's attorney apparently was not familiar with this decision at the time she responded in writing to the Objections of Certain Defendants to Plaintiff's Motion for a Temporary Restraining Order.

The temporary restraining order was denied primarily because of the lack of a reasonable likelihood of plaintiff's prevailing on the merits. The motion to dismiss the complaint was ultimately granted by our decision of April 18, 1980. Although we did not say so in our decision, we now find that the filing of this complaint, as amended, was frivolous and without merit as to this defendant. Since defendant Woods was a prevailing party, he is entitled to attorney's fees under *Christiansburg Garment Co.* v. *E.E.O.C.,* 434 U.S. 412 (1978).

The Assistant Illinois Attorney General responsible for defending Woods in this case has filed an affidavit showing expenditure of 21 hours and has stated in his motion that his "fees" are "calculated" at the rate of $50.00 per hour. Since plaintiff has not contested this representation, and since it is reasonable, we will grant the motion to amend our judgment of April 18, 1980 so as to award attorney's fees to defendant Clell L. Woods.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the decision entered April 18, 1980 is amended, and judgment is entered in favor of defendant Clell L. Woods and against the plaintiff W. Jason Mitan for $1,050.00.

ENTER:

/s/ *Thomas R. McMillen*
Judge, U. S. District Court

DATED: June 25, 1980